NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING PETITION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 1974

CASE NO. 73-403

KENNETH CARROLL KINSER,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

Opinion filed February 26, 1974.

An Appeal from the Criminal Court of Record for Dade County, Paul Baker, Judge.

Philip Carlton, Jr., and Rex Ryland, Jr., for appellant.

Robert L. Shevin, Attorney General, and William L. Rogers, Assistant Attorney General, and Gary M. Carman, Legal Intern, for appellee.

Before PEARSON, CARROLL and HENDRY, JJ.

PER CURIAM.

Appellant was convicted of manslaughter upon an information charging him with second degree murder. He was sentenced to five years imprisonment.

On this appeal, the appellant, seeks reversal on the ground that the trial judge did not adequately determine whether appellant's waiver of his right to a jury trial was made voluntarily.

The record demonstrates that appellant's trial counsel orally waived jury trial, and the court ordered the appellant to sign a written waiver in open court. We think there has been full compliance with CrPR 3.260, 33 F.S.A., in this cause, and no reversible error has been shown. See Quartz v. State, Fla. App. 1972, 258 So.2d 283.

Therefore, the judgment and sentence are affirmed.

Affirmed.

App. 3

[TITLE OMITTED]

TUESDAY, MARCH 26, 1974

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:

/s/ William P. Carter

Clerk District Court of Appeal,
Third District

cc: Rex Ryland, Jr.
William L. Rogers

/h

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CRIMINAL COURT OF RECORD FOR DADE COUNTY, FLORIDA)

App. 4

SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1974

TUESDAY, JULY 9, 1974

CASE NO. 45,366

DISTRICT COURT OF APPEAL,
THIRD DISTRICT
No. 73-403

KENNETH CARROL KINSER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, ERVIN, DEKLE and OVERTON, JJ., concur.

MR

cc: Hon. William P. Carter, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Paul Baker, Judge

Hon. Philip Carlton, Jr.
Hon. William L. Rogers

A True Copy

TEST:

/s/ Sid J. White

Sid J. White
Clerk Supreme Court.

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CASE NUMBER 71-7571 (CR. DIV.)
73-403

THE STATE OF FLORIDA,

Plaintiff,

vs.

KENNETH KINSER,

Defendant.

ASSIGNMENTS OF ERROR

[Filed for Record June 27, 1973, 10:31 A.M.

Richard P. Brinker, Clerk, Circuit & County Cts.
Dade County, Fla.]

COMES NOW the Defendant, KENNETH KINSER, by and through his undersigned attorney, and files these, his Assignments of Error on which they intend to rely in the District Court of Appeals of Florida, Third District, for reversal of those certain Judgments and Sentences entered by the Honorable Paul Baker of the Criminal Court of Record in and for Dade County, Florida and would show as follows:

1. That the Court erred in that the verdicts were contrary to law.

2. That the Court erred in that the verdicts were contrary to the evidence.

3. That the Court erred in that the verdicts were contrary to the manifest weight of the evidence.

4. That the Court erred in that the verdicts were not supported by the evidence.

5. That the Court erred in that the verdict were contrary to the law and evidence.

6. That the Court erred in that the verdicts were contrary to the sufficiency of the evidence.

7. That the Court erred in allowing testimony as a matter of fact and as a matter of law.

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8. That the Defendant's waiver trial by jury was not voluntarily executed nor was it an intelligent waiver of his Constitutional rights.

LAW OFFICES OF
PHILIP CARLTON, JR.
Attorney for Defendant
19 West Flagler, Suite 217
Miami, Florida 33130

By: Rex Ryland, Jr.

I HEREBY CERTIFY that a true and correct copy of the foregoing Assignments of Error was mailed to the Office of the Honorable Robert L. Shevin, Attorney General, 1350 N.W. Twelfth Avenue, Miami, Florida, 33125, and a copy was mailed to the Office of Honorable Richard E. Gerstein, State Attorney, 1351 N.W. Twelfth Street, Miami, Florida, 33125, this 25th day of June, 1973.

Rex Ryland, Jr.

IN THE CRIMINAL COURT OF RECORD, in and for Dade County, State of Florida,

August Term, 19 71.

71-7571

THE STATE OF FLORIDA

vs.

KENNETH CARROLL KINSER

INFORMATION FOR

SECOND DEGREE MURDER

FILED
OCT 6 1971
J. R. McCRACKEN
CLERK

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA:

RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that

KENNETH CARROLL KINSER

on the 16th day of June, 19 71, in the County and State aforesaid, by his act imminently dangerous to another and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual, did kill and murder one RICHARD T. BATES by shooting him with a pistol, a further and more particular description thereof being to the State Attorney unknown, being in violation of 782.04 Florida Statutes,

Case No. J.P. 71-7571

Criminal Court of Record

DADE COUNTY, FLORIDA

THE STATE OF FLORIDA

vs.

KENNETH CARROLL KINSER

INFORMATION FOR

SECOND DEGREE MURDER

contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

State Attorney,
Eleventh Judicial Circuit of Florida

JMB

STATE OF FLORIDA:
COUNTY OF DADE:

Personally appeared before me, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offense ~~therein~~ charged.

SUBSCRIPTION TRANSMITTED IN GOOD FAITH AND SUBSCRIBED UNDER OATH

State Attorney,
Eleventh Judicial Circuit of Florida

Sworn to and subscribed before me this 6 day of October, 19 71.

J. F. McCracken, Clerk
Criminal Court of Record, Dade County, Florida

SEAL: CRIMINAL COURT OF RECORD

By: Josephine O'Neill, D.C.

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
(Formerly Criminal Court of Record)

NO. 71-7571

STATE OF FLORIDA,

Plaintiff,

vs.

KENNETH KINSER,

Defendant.

The above-entitled cause came on for hearing before the Honorable Paul Baker, Judge of the above-styled court, at the Metropolitan Dade County Justice Building, Miami, Florida, on the 25th day of September, 1972, commencing at approximately 9:00 o'clock a.m.

APPEARANCES:

JACK BLUMENFELD and
ALAN THAYER McLAREN,
Assistant State Attorneys,
on behalf of the State of Florida.

ARTHUR W. KARLICK, ESQUIRE,
on behalf of the Defendant.

MR. McLAREN: Kenneth Kinser.

MR. KARLICK: Judge, the Defendant is outside the door.

The Defendant is a family man with five children. He is in the process of finishing a house he built for this family, Judge, and we are asking for a short continuance to finish this.

This is a construction man, Judge.

And, in addition, Judge, we are waiving jury.

State has no objection, I understand, to a continuance.

MR. BLUMENFELD: No.

THE COURT: Is that right, Mr. Blumenfeld?

MR. BLUMENFELD: I'm sorry, Judge?

THE COURT: Is his statement accurate?

MR. BLUMENFELD: About what? I have an objection or not?

Yes, it's accurate.

THE COURT: Yes, it's accurate.

MR. BLUMENFELD: If he is here, why don't you—

MR. KARLICK: He is here.

THE COURT: Have him sign the waiver now.

THE CLERK: Waiver of jury.

MR. BLUMENFELD: Well, the continuance on him, waive speedies.

MR. KARLICK: We have already waived that long ago when you were at a seminar. We waived that.

THE CLERK: Are we waiving jury?

MR. BLUMENFELD: Yes.

MR. KARLICK: Yes.

THE COURT: November 10th at 2:00.

(Thereupon the hearing was concluded.)

CERTIFICATE

STATE OF FLORIDA)
: SS.
COUNTY OF DADE)

I, VIRGINIA SAVALLI, hereby certify that the foregoing transcript, pages 1 through 3, is a true and correct transcript of the proceedings had in the cause of STATE OF FLORIDA, Plaintiff, versus KENNETH KINSER, Defendant, Case No. 71-7571, pending in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida, (Formerly Criminal Court of Record), before the Honorable Paul Baker, presiding Judge, on September 25, 1972.

IN WITNESS WHEREOF I hereunto set my hand this 27th day of August, 1973.

/s/ Virginia Savalli
Court Reporter

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MINUTES OF THE CLERK OF THE COURT

(On October 21, 1971, the Clerk of the Court entered in Criminal Court of Record Minute Book No. 513, on Page 174, the following minutes, to wit:)

Division "B" October 21, 1971

* * *

STATE OF FLORIDA
VS. #71-7571 SECOND DEGREE MURDER
KENNETH CARROLL KINSER

James Woodard, Assistant State Attorney.

Art Karlick, Counsel for Defendant.

Reported by Ginger Savalli.

The Defendant was arraigned and Pleaded not guilty.

The Court granted the Defendant thirty (30) days leave within which to file any motions he may be advised, including motions directed toward the Information.

* * *

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(And on September 25, 1972, the Clerk of the Court entered in Criminal Court of Record Minute Book No. 558, on Page 619, the following minutes, to-wit:)

DIVISION "B" September 25, 1972

* * *

STATE OF FLORIDA
vs. #71-7571 SECOND DEGREE MURDER
KENNETH CARROLL KINSER

Jack R. Blumenfeld, Assistant State Attorney.

Arthur W. Karlick, Counsel for the Defendant.

Reported by Ginger Savalli.

The Defendant waived trial by jury.

* * *

(And on March 23, 1973, the Clerk of the Court entered in Circuit Court, Criminal Division Minute Book No. 15, on Pages 542 and 543, the following minutes, to-wit:)

Judge Paul Baker March 23, 1973

* * *

STATE OF FLORIDA
vs. #71-7571 SECOND DEGREE MURDER
KENNETH CARROLL KINSER

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Michael Morgan and Ira L. Dubitsky, Assistant State Attorneys.

William J. Swink, Arthur Karlick and Judson Bruce Phelps, Counsel for the Defendant.

Reported by Joanne Santiago.

The Court granted William J. Swink's Order Granting Leave for Withdrawal of Counsel.

All the witnesses and the Defendant were sworn and the Rule was invoked at the request of the State.

The respective Counsel stipulated and agreed to certain facts alleged in the Information.

The Court admitted into evidence the following item:

Autopsy Protocol ..... State's Exhibit #1

State's Witnesses:

1. Daniel P. Green

State rests.

mcm Continued on next page

BOOK 15 PAGE 542

Judge Paul Baker March 23, 1973

The Court denied the Defendant's oral Motion for a Judgment of Acquittal, reducing the Charge to "Manslaughter".

Defendant's Witnesses:

1. Kenneth Carroll Kinser—Defendant

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2. Shirley Stanley

3. Bill Parker

4. James Daniel Kelley

5. Robert Edmond May

6. Charmine Ruth Kinser

Defendant rests.

State rests.

The Court adjudged the Defendant guilty of "Manslaughter" and sentenced him as follows:

SEE BOOK 4, PAGE 692

* * *

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BENCH DOCKET

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY
Case No. 71-7571
STATE OF FLORIDA
vs.

KENNETH CARROLL KINSER

CHARGE, SECOND DEGREE MURDER

(Filed March 23, 1973)

(Richard P. Brinker, Clerk)

JUDGMENT

It appearing unto this Court that you Kenneth Carroll Kinser have been regularly tried and convicted of Manslaughter.

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offense as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that you be imprisoned by confinement at hard labor in the STATE PENITENTIARY for a term of Three (3) years.

DONE AND ORDERED in open Court at Miami, Dade County, Florida, this 23rd day of March A.D., 1973.

/s/ Paul Baker,

PAUL BAKER, Judge

FILED AND RECORDED
IN CIRCUIT COURT
MINUTES AS INDICATED HEREON

Richard P. Brinker, Clerk

By: DORIS McVAY

Deputy Clerk

BOOK 4, PAGE 892